

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS**

ROBERT EMMA, Custodian, IRA, DTD 7/10/97,

Plaintiff,

vs.

RS INVESTMENT MANAGEMENT, L.P.; PFPC
DISTRIBUTORS, INC.; G. RANDALL HECHT;
LEONARD B. AUERBACH; JEROME S.
CONTRO; JOHN W. GLYNN, JR.; and MICHAEL
McCAFFERY,

Defendants, and

RS EMERGING GROWTH FUND

Nominal Defendant.

Case No. 04-cv-12106-NMG

AFFIDAVIT OF JAMES E. BURNS, JR.

James E. Burns, Jr., upon oath, deposes and says as follows:

1. I am an attorney licensed to practice law in California. I am a partner in the law firm of Orrick, Herrington & Sutcliffe, LLP in San Francisco, California. I represent defendants RS Investment Management, L.P., G. Randall Hecht, Leonard B. Auerbach, Jerome S. Contro, John W. Glynn, Jr., and Michael McCaffery (collectively, "RS Defendants") in the above-captioned action.

2. I submit this affidavit in support of the Motion For Admission *Pro Hac Vice* submitted by Daniel B. Schwarcz of Ropes & Gray, LLP, who is acting as local counsel for the RS Defendants, and who also represents PFPC Distributors, Inc. in the above-captioned matter.

3. I am familiar with the facts and circumstances underlying the captioned action and my admission *pro hac vice* will facilitate the just and speedy resolution of this action.

4. I am a member of the bar of the State of California and am admitted to practice in the United States District Court for the Northern District of California. I am a member in good standing in all jurisdictions where I have been admitted to practice.

5. There are no disciplinary proceedings pending against me in any jurisdiction where I have been admitted to practice.

6. I have reviewed and am familiar with the Local Rules of the United States District Court for the District of Massachusetts.

Signed under penalty of perjury this 10th day of January, 2005.

s / James E. Burns, Jr.
James E. Burns, Jr.
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